



Native People and the Criminal Justice System:

The Role of the Native Courtworker

- A paper prepared for the Legal Aid Bulletin
October, 1981

Native Counselling Services
of Alberta

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five courtworkers and recent additions to the judicial justice

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Introduction:

Native Courtworkers are recent additions to the Criminal Justice system. They emerged as a response to the injustices that frequently occurred when Native people became involved with the legal system. These injustices were seldom based on racial discrimination by Criminal Justice system personnel, rather they were a result of lack of knowledge. Native people seldom had knowledge of the law, the terminology and procedures of the court, agencies from which they could get assistance, how to obtain lawyers, their rights, their responsibilities in the process, or the kind of information needed by the court to carry out fair sentencing. Criminal Justice personnel seldom had knowledge of Native lifestyle, culture, the motivation behind behaviour exhibited by Native people, the language difficulties they faced or the consequences of inappropriate sentencing on Native people, such as the special hardships they faced in trying to pay fines or obeying inappropriate probation orders.

In the late 1960's, it became obvious to both the system and the Native community that some sort of "intermediary" program was necessary. In Alberta, Native Counselling Services of Alberta was formed to act as a carrier agency for the Criminal Courtwork program which was jointly funded by the Provincial and Federal Governments. Native courtworkers would function as paralegals and would bridge the gap between the Native offender and the Criminal Justice System.

This paper will look in detail at:

- 1) Why the courtworkers are needed,
- 2) What courtworkers do,
- 3) Why courtworkers are effective.

1) Why are courtworkers needed?

The difficulties that arise when Native people become involved in the Criminal Justice System are felt by both the Native offenders and the Criminal Justice System personnel who must deal with them. Native offenders frequently receive sentences that are ultimately inappropriate and unfair. The Criminal Justice System personnel are forced to contribute to these unfair and inappropriate decisions because they have insufficient information to take any other action. There are documented cases of Native offenders who were sentenced for breaking into their own houses, and who were sentenced for the "theft" of a borrowed tool.

The difficulties are rooted in cultural conflicts: a) a conflict between Native and Non-Native cultures, and b) between the "poverty" class and the middle class.

a) Native and Non-Native cultural conflicts:

Native and Non-Native (mainly European-based) cultures differ in a number of ways that may influence how Native people interact with the legal system:

- (i) Traditional Native justice was based on informal social control mechanisms.
- (ii) Traditional Native justice was based mainly on preserving the welfare of the group, meaning that the interests of

the individual often were of secondary importance. Theft, adultery and assault were therefore relatively minor "offenses". The tribe intervened in a dispute between individuals only when the dispute was unresolvable or unreasonable demands were made.

- (iii) Conformity was more important than punishment.
- (iv) Traditional Native justice was flexible, situational and adaptable, meaning that an action may not be an "offense" at one point but may be at another, depending on the circumstances.
- (v) Traditional Native justice was not a separate institution but rather an integral part of the socialization process and social, religious and economic functioning of the group.
- (vi) Traditional Native justice relied on reimbursement, replacement and reconciliation with the intention of achieving a balance in the group and harmony between the individuals or groups involved in the "offense". "Punishments" were immediate and designed to help the welfare of the group eg: replacing stolen objects, substitutive "payments" for violent offenses, (eg: someone committing an assault would take over the responsibility of feeding the victim's family until the victim recovered).
- (vii) Positive reinforcement was emphasized as much as punishments, for example, gifts and songs of praise to well-doers were as prominent in the culture as negative reactions and could, theoretically, "balance out" or overcome any stigma associated with wrong-doing.
- (viii) Enforcers, if they existed in the Native group, held their

positions by receiving group support in carrying out their duties.

Although each Native group had practises specific to its own history and worldview, the characteristics mentioned above seem to encompass the traditional justice practises of all of Alberta's Native groups and perhaps could be generalized to many other Indian groups.

The differences between the Native system of justice and the one currently practised in Alberta are fairly extensive. A few examples of these differences are listed below:

Native *

"European"

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|---|--|
| a) situational factors are important in considering the "offense". | a) sentencing is formalized, legislated and written in the various Acts and Codes. Situational factors are taken into account only as part of the Criminal Justice System personnel's discretion. |
| b) "punishment" is immediate. | b) the process takes time, sometimes up to ten years in civil cases. |
| c) "laws" are verbally communicated. | c) laws are written and codified. |
| d) the relevance of the "offense" to the welfare of the group determines the seriousness of the offense and punishment. | d) the seriousness of the offense depends on current morals, on the value of property involved, or amount of physical harm to the victim. There are very few "system" offenses - treason, assaulting a Police Officer, obstructing justice and a few others. |
| e) the Band only intervenes in individual disputes if the demands that are made are unresolvable or unreasonable. | e) the system is immediately involved. |
| f) conformity is more important than retribution, etc. | f) conformity is usually irrelevant except as an influence on the Criminal Justice system personnel's discretion. |

(Native, cont.)

- g) the "punishment" benefits both the victim and the group.
- h) Justice is an integral part of the group's functioning and is understood by all.
- i) positive reinforcement and punishments are both prominent.
- j) enforcers have positions and power through popular consensus.

("European", cont.)

- g) punishment seldom benefit the group, and the victim only if restitution is ordered.
- h) Justice is a separate institution, completely understood only by specialists.
- i) punishments are emphasized.
- j) enforcers are hired, do not depend directly on popular support and do not always have popular consensus on actions.

* This comparison is based on information gathered from a survey of literature on Traditional Native justice done by NCSA in 1980, as well as information gathered in 1981 from courtworkers across the country.

It is quite apparent that these two structures are antithetical to each other.

In many ways, as the European-based Canadian culture achieved dominance over the traditional Native culture, Natives were expected by law to conform to the dominant Justice system, its laws, and the special laws it created to deal with Indians, such as treaties and the Indian Act. However, very little provision was made for Native people to learn about the law and the system that affected them, and the isolated reserves and colonies were not in a great deal of contact with White culture. Even today, many Native people have a poor knowledge of the English/French language and the procedures used by the system.

This means that older Native people still base many of their beliefs about justice on the traditional system and possibly, on perceived treaty rights. The socialization of the younger Native people, much of

which is done by the grandparent generation, would therefore also strongly reflect on the traditional system. This is particularly the case in isolated communities that have little access to the modern media. Residential and public schools do teach about law and the criminal justice system to some extent, but most of this formalized education occurs at the high school level. The great majority of Native students drop out at grade 10 or before. (Indian and Northern Affairs reports that in 1976, approximately 80% of all Native students dropped out of school before grade 12, (1980:49).

These factors serve to at least partially explain the great confusion felt by most Native people in contact with the legal system.

The second major conflict that affects Native people involved with the legal system is:

b) Middle-class and poverty-class cultural conflicts:

The differences between middle class and poverty class culture are not as clearly defined as those between the Native and Non-Native and are more open to debate. Some of the characteristics of the "poverty culture" of relevance to this discussion are:

- (i) a lack of education, specifically,
 - a) about the law, legal terminology, court procedures and legal assistance.
 - b) in job skills that would enable a middle-class person to have a moderately well-paying occupation.
- (ii) a lack of employment opportunities (especially on reserves) or employment in unskilled, low-paying jobs.

- (iii) a lack of facilities and resources such as alcohol treatment centres, recreational facilities, and inexpensive legal services. This is particularly the case in isolated communities.
- (iv) poor role models for law-observing behaviour. Associates are likely to freely discuss activities such shoplifting, vandalism and alcohol-related offenses. A jail sentence may be considered a status symbol (as in the case of 15 year old boys asking to be waived to adult court).
- (v) a stressful and frustrating socio-economic status that may have serious psychological effects manifesting themselves in violent behaviour.
- (vi) a fear of authority and bureaucracy that may lead to feelings of powerlessness and fatalism.
- (vii) a lack of self-esteem.
- (viii) a fear of appearing ignorant in front of others.
- (ix) a lack of money to pay fines or to retain good lawyers.
- (x) a transient lifestyle which means ineligibility for community-based alternatives such as diversion.
- (xi) an alcoholic lifestyle.

These are the factors mentioned most frequently by courtwork staff as causing problems for their clients. These factors that influence the behaviour and responses of the Native offenders are seldom taken into account by Criminal Justice personnel who are unaware of them because their own standards and values are predominantly based in another class. This lack of awareness may lead to situations such as a man supporting a large family by hunting, receiving a probation order forbidding the use of firearms for two years, or a person who is unemployed or on welfare receiving

a large fine with no time to pay.

Many Criminal Justice personnel realize that they may not be making completely informed and fair decisions about Native offenders but, until the advent of courtworkers, had few if any resources to consult. Their need is for information, as is the need of the Native community member. Information is of course, not the only measure needed to resolve the difficulties that cause Native people to become involved with the law or occur once the Native offender is involved in the justice system, it is, however, one of the measures that courtworkers can provide.

2) What can courtworkers do?

The primary function of courtworkers is to act as a bridge between the legal system and the Native offender. This is done mainly by supplying information to both groups, along with a number of other essential services:

1) For the client, the courtworker provides information about:

- i) the law - criminal, civil, family, and why certain actions are considered criminal and/or can result in court appearance.
- ii) how to get legal assistance such as through Legal Aid, or referring them to a private lawyer.
- iii) various legal forms and documents, such as Legal Aid, Social Assistance forms, coroner's reports, probation orders.
- iv) their options once in the system, such as types of sentences, diversion, restitution.
- v) other helping organizations that provide services such as housing, alcohol treatment and employment counselling.
- vi) the general meaning of legal terms and the proper procedures to follow in court.

- vii) their rights in the process such as obtaining bail, obtaining a lawyer, getting pardons, suing for false arrest.
- viii) their responsibilities in the process such as showing up for court, speaking up for themselves, paying fines.

In addition, courtworkers also:

- ix) are role models to the clients.
- x) give clients support and a feeling of not being alone.
- xi) assist the client's family to understand what is happening.
- xii) get charges waived in or out.
- xiii) do followups, to ensure that clients are aware of what has happened and know where to go from there.
- xiv) in some areas of the country courtworkers contact Native inmates in correctional institutions and help them with their parole plans, do personal counselling, and assist Native Brotherhoods with recreational, social and cultural programming.
- xv) in some areas of the country courtworkers assist released Native inmates either formally as parole or probation supervisors or on a less formal information and support-giving basis.
- xvi) in some areas of the country courtworkers assist in family, juvenile, small claims, traffic and appeal courts and with administrative law matters, such as wardships, maintenance orders, juvenile delinquency charges, disputed traffic tickets, wage disputes, change of name matters, taxation of lawyers, affidavits, landlord-tenant disputes, etc.

- xvii) courtworkers in some areas of the country are getting involved in prevention services, especially juvenile delinquency prevention.

Not all clients of courtworkers are Native or offenders. Some clients simply need information. In isolated areas, courtworkers may be the only legal information resource available to the community.

Courtworkers see clients in the client's home, in institutions, in police cells, in courtworker offices and even on the street.

- 2) For Criminal Justice System personnel such as police, lawyers, prosecutors, judges and probation officers, courtworkers provide the following services:
- i) giving information on problems encountered by Native people such as alcoholism, unemployment, lack of education, poor knowledge of English.
 - ii) assisting Criminal Justice personnel with misunderstandings between themselves and their clients which are rooted in cultural differences.
 - iii) sensitizing Criminal Justice personnel to Native culture, its traditions and history.
 - iv) assisting when there are language difficulties such as in interviewing Native clients and witnesses.
 - v) bringing up information needed by Criminal Justice personnel that the client does not know are relevant.
 - vi) suggesting more appropriate alternative sentences to prosecutors and judges such as alcohol treatment, life-skills courses, restitution, community service orders and diversion.

- vii) conducting community inquiries, giving pre-sentence reports and speaking to sentence.
 - viii) locating clients or hard to find witnesses.
 - ix) working to make Native people more comfortable with the system and more aware of their responsibilities as clients.
 - x) increasing the knowledge of the clients so that the system functions more smoothly and more quickly.
 - xi) in some areas of the country providing bail, parole and probation supervision.
 - xii) in some areas of the country assisting in the training of judges and police officers.
 - xiii) in some areas of the country taking an active role in law reform by presenting briefs and making recommendations to government bodies.
- 3) Courtworkers also provide services to the general community:
- i) by writing legal information articles for local newspapers.
 - ii) by appearing on local radio and television shows to talk about the law, Native people and/or courtworkers.
 - iii) by talking to young people in schools about the law and the legal system.
 - iv) by providing information to any interested group or individual on Natives, the law or the legal system.

3. Why are courtworkers effective?

First of all it should be noted that, as mentioned earlier, in isolated areas where services such as lawyers, information hot lines, social workers, Legal Aid and libraries are not available, the courtworker may be the only resource available to the community on the law and the legal system.

This is particularly true in areas such as the Northwest Territories, Northern Ontario, Labrador and to some extent, the Northern parts of the Prairie provinces.

In other areas of the country, Native people have access to other services but are often reluctant to use them, preferring instead to go to courtworkers who, they seem to feel, will provide them with better service. In a recent program review carried out on Native Counselling Services of Alberta's Criminal Courtwork program, a wide range of people were interviewed about their perceptions of the effectiveness of courtworker services. Both clients and criminal justice personnel expressed great satisfaction with the operation of the program and the services it provides. Judges made comments such as "There is no service as essential as the Criminal Courtworker in court, they are the single most valuable person in court". (Co-West, 1981:64) and "We couldn't get by without it. If it wasn't there tomorrow, I'd have to rely on myself and I'd miss even more than I do now. There'd be nobody to speak for them (Native people) and support them and I could give an inappropriate sentence. We need it". (Co-West, 1981:64). Clients made comments such as "The courtworker spoke up for me in court. It's scary there. Helped me understand charges and what was happening". (Co-West, 1981:125) and "He did me good. Helping right now to get me a place in town. Will supervise my parole. I wanted someone who can understand me". (Co-West, 1981:126).

In discussing the general image of the program the evaluators observed that: "Most of those interviewed clearly believe that N.C.S.A.'s Criminal Courtworker program has helped Native people as well as the other actors within the Criminal Justice System. Even those who have criticisms of various aspects of the Program, still report that it has had a positive

impact and is an important, vital service", (Co-West, 1981:163).

The program review does not go into great detail on why courtworkers are effective, however, NCSA suggests here that the effectiveness of courtworkers may in part be due to the following factors:

- a) Clients feel they can identify with courtworkers because they usually come from similar cultural and socio-economic backgrounds and have had many of the same life experiences.
- b) Courtworkers frequently speak the same Native language as the client.
- c) Courtworkers are frequently members of the same community as their clients. Most courtworker agencies make a point of hiring courtworkers from the community they serve. This means they receive greater client trust, usually know the client and their family personally, have a better knowledge of community resources, have better contacts, and usually work harder for their clients.
- d) Courtworkers are more informal and less bureaucratic than other criminal justice personnel, and seldom use "twelve dollar words" but if they have to, explain them carefully.
- e) Courtworkers receive training in specialized areas such as legal terminology, court procedures, and the organizational structure of the system.
- f) Courtworkers are not afraid of the workings of the Criminal Justice system, a feeling which communicates to the client.
- g) Courtworker services are more accessible and better known to Native people than most other criminal justice programs. Programs are advertised in Native newspapers, pamphlets are put out, courtworkers sometimes have displays at Native cul-

tural events, posters are placed all over the community and referrals to courtworkers are frequently made by other criminal justice staff. Courtworkers go to the courthouse every day before court; they go to the police cells; they visit institutions; they visit the client's home if requested. As mentioned previously, courtworkers could also be seen by their clients as being emotionally more accessible because of their Native status. There are, as yet, very few other Native criminal justice personnel, specifically, lawyers or judges, although the number of Native police officers is increasing.

Conclusion:

Almost every province and territory in Canada has a Native Courtworker program (Prince Edward Island and New Brunswick as yet do not, and Nova Scotia has only a short-term project). Courtworker programs are rapidly proving themselves to be an invaluable and vital part of the Criminal Justice system. The provision of courtworker services is only a first step however; there are still many areas within the criminal justice system where 1) increased services for Native people are needed, 2) more Native staff are needed, and 3) more information on Native culture must be made available to Non-Native staff. There are different levels of service provided to Native people across the country: some provincial courtworker agencies are severely understaffed, some provinces do not have Native Liaison programs in their correctional institutions, more Native-run halfway houses are needed, as are more Native-operated alcohol-treatment programs. Alberta's NCSA has shown that is possible for a courtworker agency to run a wide variety of programs not traditionally operated by private agencies,

such as Fine Options, minimum security forestry camps and impaired drivers education. NCSA has also shown that Native organizations can develop the organizational and financial expertise to effectively operate these kinds of programs.

In general, government programs are underused by Native people across Canada - they seldom use Fine Options, they are alienated by many government probation officers, parole supervisors and social workers; and they often feel that work programs and counselling offered in correctional institutions are completely inappropriate to the situation in their home communities.

More consideration should be given by government departments to contracting out these services to Native carrier agencies in areas where there is a large Native population. If the current programs are not effective for Native clients, then consideration should be given to contracting with Native carrier agencies to develop new, more effective programs.

For services and programs that could not, for whatever reason, be contracted out to private agencies, special efforts should be made to hire Native staff in proportion to the number of Native clients usually dealt with by the program. Non-Native staff that deal with Native clients should be required to take cross-cultural training to sensitize them to their client's special needs. Courtworker agencies could assist both in recruiting and training these staff.

In short, this article recommends:

- 1) More services for Native people should be provided within the Criminal Justice System.

- 2) Some of these services should be contracted out to Native carrier agencies.
- 3) Native staff should be hired in proportion to the number of Native clients handled by the program.
- 4) Non-Native staff dealing with Native clients should receive cross-cultural training.
- 5) Courtworker agencies should be asked to assist in recruiting Native staff and training Non-Native staff.

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trauma inflicted on us by those people and the agony we will endure because of them."

Compiled by — Duanita Eleniak,
Director, Sexual Assault Centre,
Edmonton.

NATIVE COURTWORKERS AND SENTENCING

Native Counselling Services of Alberta (NCSA) is one of the nine courtworker agencies across Canada providing services to Native people involved with the legal system. NCSA, the oldest and largest courtworker agency, has been active in the criminal justice system and the social service field since 1970. Originally having one courtworker active in the Edmonton municipal (now provincial) court, the agency now has over sixty courtworkers providing services throughout the province in criminal, family, juvenile, and appeal courts.

There is also a host of support programmes, including a Native liaison programme in provincial and federal correctional institutions, two minimum security forestry camps, parole supervision, probation supervision, fine options supervision, a legal education/media programme, parenting skills programmes, youth programmes, and a suicide prevention programme.

Native people appearing in court encounter special problems: language and communication barriers; unfamiliarity with court procedures; inability to pay fines; reluctance to speak up for themselves; lack of knowledge of agencies to turn to for assistance and guidance; confusion about the law; and confusion about Native rights.

Courtworkers assist these people, and the courts, by ensuring that Native people are aware of the charges, possible sentences, and court procedures. Courtworkers also assist clients to get legal representation, refer to appropriate agencies, and provide client support and counselling, and assist in providing interpreters.

The three main roles of the courtworkers in sentencing are: to provide the court with relevant background information on the client; to recommend to the courts sentencing alternatives particularly appropriate to the accused; and to explain sentencing to the accused so that he understands his rights and obligations.

In order to make a fair decision on how to sentence the Native accused, the court needs information on cultural background, general upbringing (living on reserves, in foster homes, in the bush), marital status, dependents, and so on. The courtworker can provide this.

Because the courtworker is familiar with the individual's background and needs, he can recommend alternatives such as alcohol rehabilitation, bush camps, probation, life skills training, or fine options. There is a traditional Native cultural emphasis on community mediation and involvement in the rehabilitation. The courtworker can assist the court in taking advantage of these Native-oriented sentencing alternatives.

An explanation of the sentence to the accused may assist the court by reducing the number of accused defaulting on fines, not carrying out community service orders, or not following probation orders. The courtworkers can explain these without the legal jargon, and perhaps in the Native language.

Not all of the cases, by any means, in which courtworkers are involved are dramatic. Courtworkers remain, though, an important resource to the Native client, and to the court.

Contributed by the Native Counselling Services of Alberta.

THE MAIL BAG

NUTRITION AND ABERRANT BEHAVIOUR

To the editor:

In reponse to the article "The How and Why of Crime Prevention" by William Nichols: I have corresponded with and met Mr. Nichols since publication, and judge that my reponse to this article is worthy of consideration of publication . . .

I consider that the subject of nutrition in crime prevention is worthy of more attention than has been given to date by the John Howard Society.

In reference to this subject I have been in continuing correspondence with William Outterbridge of the National Parole Board, and with Mr. Yeomans of the Correctional Service of Canada. Unfortunately to date I have not had much indication that this correspondence . . . has been very productive.

The "bottom line" of this entire subject is that, as stated by Alexander Schauss, it has been proven beyond doubt that even the taking of sugar away from the diet of inmates of corrective institutions does reduce their tendency to criminality, measured by their behaviour, by 48%! This trial has been conducted in institutions where the sugar has been removed with the above-mentioned result, and then replaced in the diet, with a recurrence of the aberrant behaviour, which behaviour was again remedied when the sugar was again removed from the diet.

As Mr. Schauss stated, if the justice system and correction system waits for another five thousand such well controlled tests, before applying this principle to convicted criminals, by that time it will be too late! The evidence is at hand, and I judge that it is seriously incumbent on the public, that is on societies such as the John Howard Society, to see that the impassive justice system and correction system is made cognizant of these facts.

Yours very truly,
Carl J. Reich, M.D., FRCP (C)

Editor's Note: Dr. Reich is a specialist in internal medicine practising in Calgary and Edmonton.

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NATIVE COURTWORKERS AND SENTENCING

Compiled by — Doreen E. [unclear]
Director, Social Assault Centre,
Edmonton.

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medicine practising in Calgary and Edmonton. Editor's Note: Dr. Reich is a specialist in mental health. Carl A. Reich, M.D., FRCP (C) Yours very truly,

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NUTRITION AND ABERRANT BEHAVIOUR

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I consider that the subject of nutrition in crime is not a worthy of more attention than has been given it by the John Howard Society.

In response to this subject I have been in correspondence with William O'Rourke of the Royal Police Board, and with Mr. Yocom of the National Society of Canada. Unfortunately, I have not had much indication that this correspondence has been very productive.

The "bottom line" of this entire subject is that, as Alexander Schanck, it has been proven beyond doubt that even the taking of sugar away from the inmates of corrective institutions does reduce the incidence of criminality, measured by their behaviour in the community, measured by their behaviour in the community.

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